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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,595	12/11/2003	James R. Keene	KBLD.P0105US	8193
23908 7590 12/15/2009 RENNER OTTO BOISSELLE & SKLAR, LLP 1621 EUCLID AVENUE NINETEENTH FLOOR CLEVELAND, OH 44115				
EXAMINER				
CANFIELD, ROBERT				
ART UNIT		PAPER NUMBER		
3635				
MAIL DATE		DELIVERY MODE		
12/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/733,595

Applicant(s)

KEENE, JAMES R.

Examiner

ROBERT J. CANFIELD

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4, 6, 7, 9-11, 13, 15, 16, 18-20, 22, 23, 25-27, 29 and 31-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32-41 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6, 7, 9-11, 16, 18-20, 22, 23, 25-27, 29, 31, 42-50 is/are rejected.
- 7) ☒ Claim(s) 13 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-646)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. This Office action for application serial number 10/733,595 filed 12/11/03 is response to the amendment filed 08/19/09. Claims 1, 3, 4, 6, 7, 9-11, 13, 15, 16, 18-20, 22, 23, 25-27, 29 and 31-50 are pending. Claims 2, 5, 8, 12, 14, 17, 21, 24, 28 and 30 have been canceled.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 3, 4, 7, 9-11, 16, 18-20, 25-27 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,067,781 to Ford et al.

Ford provides first and second mats 10 of pervious polymer filaments connected by a flexible hinge 16/18 that can be centrally bonded or continuously over the top or bottom, or provided by plural narrow spaced strip (col. 4, lines 19+).

Column 3, lines 35-40 recite that the device may be made using the product of US Patent 4,351,683 to Kusilek. Column 4, line 12 of US Patent 4,351,683 lists polyamide as one of the polymeric materials useful in making a mat of polymer filaments. The cavity and inner/outer wall structure is not a positively recited element of the claims. The device is only related to the environment with intended use type language.

A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See

In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Recitations of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

4. Claims 45, 46, 49 and 50 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,883,284 to Burgunder et al.

Figure 6D shows a V-shaped embodiment where hinge 19 connects mats 20 and 21. Figure 2 shows that upper edges have a "pointed upper edge region".

Claims 6, 22, 23, 43, 44, 47 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by US 2003/012810 to Brunson et al.

Figure 2 shows a mortar and debris collection device comprised of two mat sections hinged to form a generally V-shape where one section is substantially two to three as wide as the other. The device is positioned in the cavity to shield flashing 34 and is permeable at openings 10.

Applicant argues that U.S. Patent 6,067,781 to Ford can not anticipate the claims as amended because it fails to disclose that the thermoplastic polymer filaments can be polyolefin filaments of polyamide filaments. In response the examiner points to column 3, lines 34+ of Ford which provides that the material of pad 10 can be made from the products described in US Patent 5,456,876 or similarly US Patent 4,351,683. US Patent 4,351,683 clearly provides polyamide as a suitable thermoplastic material for pad 10 at column 4, line 12 and thus the claims are anticipated by Ford.

Note that claims 45-50 do not require the mats to be material claimed in earlier claims. Further, the language "has a pointed upper edge regions" is considered broad enough that Burgunder et al reads on it. With respect to claims 45, 46, 49 and 50, an amendment which clearly pointed out that the thickness of the mat elements came to, or tapered to a pointed upper edge would appear to overcome Burgunder.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 3,691,004 to Werner et al teaches the use of both polyamide and polyolefin (column 2, line 69) in making fibrous mats.

US Patent 3,837,988 to Hennen et al teaches the use of polyamide (column 5, line 5) in making fibrous mats.

US Patent 5,456,876 teaches mats made from extruded polymeric filaments.

US Patent 6,023,892 to Sourlis teaches a mortar and debris collection device comprised of fibrous collection device 32 over flashing 30.

US Patent 7,481,921 shows a V-shaped mat in figure 5 having portions of unequal length. This reference does not qualify as prior art.

US Patent 6,131,353 teaches a mat of polymeric filaments made from polyamide.

US Patent 7,526,900 to Ehrman et al teaches a cavity wall mortar blocking device including a hinged portion 56 which can be made from a mat of fibers (column 3, line 52). This reference does not qualify as prior art.

US Patents 4,622,138 to Wager, 6,241,421 to Harvie et al and 5,860,259 to Laska teach hinged V-shaped members.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6840. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert J Canfield
Primary Examiner
Art Unit 3635

/Robert J Canfield/

Primary Examiner, Art Unit 3635